

New Jersey State Tax news

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from the director's desk

Streamlined Sales and Use Tax

Current information about the effect of the Streamlined Sales and Use Tax Agreement on New Jersey's sales and use tax is available at:

[Streamlined Sales and Use Tax Legislation and Notices](#)

[Streamlined Sales and Use Tax Registration, Amnesty, and Program Information](#)

We will be updating the information on an ongoing basis. A [list](#) of links to the materials that have already been published appears on page 6 of this issue.

Enforcement Highlights

The Division of Taxation's ongoing enforcement and prosecution efforts resulted in several arrests and indictments recently.

Tax Fraud Schemes

- In September, an Essex County man was sentenced after pleading guilty to Medicaid fraud and failure to pay income taxes.
[View U.S. Attorney's press release](#)
- In August, an Essex County tax preparer was indicted for filing nearly 400 fraudulent New Jersey income tax returns claiming \$265,397 in earned income tax credit refunds.
[View Attorney General's press release](#)

Cigarette Trafficking Operations

- An Ocean County businessman faces criminal charges as a result of enforcement efforts targeting cigarette and cigar sales to juveniles.
[View Treasurer's press release](#)
- In August, dozens were arrested in New Jersey and other states on charges of smuggling counterfeit cigarettes into the U.S. as well as other offenses.
[View Attorney General's press release](#)
- Increased enforcement prevented the loss of \$1.9 million dollars in unpaid cigarette and sales and use taxes in fiscal year 2005.
[View Treasurer's press release](#)

Robert K. Thompson

GROSS INCOME TAX Grantor Trusts

For tax year 2004, the Division of Taxation revised its position on the reporting of taxable income from a grantor trust, changing the reporting requirement to be the same as that of a beneficiary. The grantor was to net all income from the trust, regardless of its character, and report the result in the category "net income from estates and trusts" on the grantor's tax return.

The Division's prior position was that income from a grantor trust retained its character, as reflected on the trust's NJ-1041, and was reportable by the grantor in the appropriate categories on the grantor's tax return.

A grantor trust is different from other trusts and has unique income reporting requirements. Income and deductions of a grantor trust are taxable to or reportable by the grantor even though the grantor does not receive the trust income. A grantor trust is a legal entity created under State law that is not recognized as a separate tax entity for income tax purposes because the grantor or other substantial owners retain certain powers over or interests in the trust. A grantor is generally the person who sets up the trust.

Clearly, a grantor is not the same as a beneficiary and as such is treated differently for Federal income tax purposes and for the same reasons should be treated differently for New Jersey gross income tax purposes. Therefore, the Division is reinstating its previous position on the reporting of income from a grantor trust by a grantor.

For tax years 2005 and after, income from a grantor trust retains its

character and is reportable on the grantor's tax return in the appropriate categories of income.

For tax year 2004 only (for taxpayer convenience and to avoid the filing of amended returns with no real tax impact), the Division will accept the reporting of income from a grantor trust by a grantor under either position.

Should you have questions or require additional information on this issue, please contact the Division of Taxation's Individual Tax Audit Branch at PO Box 288, Trenton, New Jersey 08695. □

GROSS INCOME TAX Post-Retirement Contributions to 403(b) Plan

Under provisions of the Federal Economic Growth and Tax Relief Reconciliation Act (EGTRRA), employers may make post-retirement contributions to a §403(b) plan up to five years following an employee's separation from service. For Federal tax purposes, these contributions are not taxable to the employee when made to the plan but are taxable upon withdrawal from the plan.

The New Jersey Gross Income Tax Act, unlike the Internal Revenue Code of 1986, does not have a provision deferring the tax on contributions made by an employer or employee to a §403(b) plan. As such, these contributions are taxable for New Jersey tax purposes in the year made and are subject to withholding like any other wage or remuneration paid to an employee.

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Subscribe to *NJ Tax E-News* on our Web site to be notified when new issues become available.

This publication is designed to keep taxpayers, tax practitioners, and the general public informed of developments, problems, questions, and matters of general interest concerning New Jersey tax law, policy, and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for New Jersey tax laws and/or regulations.

Division of Taxation Director:
Robert K. Thompson

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403(b) plan contributions - from page 2

Thus, employers making post-separation contributions to a former employee's §403(b) account must issue the employee a W-2 indicating the amount contributed in the State wages box and must withhold New Jersey gross income tax if the amounts contributed require withholdings.

When completing their gross income tax return(s), the employee must report these contributions reflected on the W-2 received as wages in the year(s) made, calculate their tax accordingly, and claim any withholdings listed on the W-2. Any distributions the employee receives from the §403(b) plan must be adjusted/reduced for the contributions already reported and taxed for gross income tax purposes. □

INHERITANCE/ESTATE TAX

Common Filing Errors

When filing a New Jersey Inheritance Tax Return (Form IT-R) or a New Jersey Estate Tax Return (Form IT-Estate), there are a number of common errors and omissions which may result in a delay in the processing of the return and the issuance of tax waivers or in an estate being selected for audit. The forms referred to below are available on the Division's Web site at:

www.state.nj.us/treasury/taxation/prntinh.htm

Decedent's Social Security Number. The decedent's social security number must be entered in the space provided. Common errors include entering the social security number of the decedent's spouse or the executor, or entering the decedent's social security number incorrectly.

It is important to verify that the decedent's social security number is entered correctly on all submissions including estimated payments; applications for extensions of time to file; and Forms L-4, L-8, and L-9.

Other Social Security Numbers.

The social security number of the executor or administrator and beneficiaries must be entered where indicated.

Missing or Incomplete Schedules.

All schedules must be attached even though they may contain no information. All questions listed on Schedule C of Form IT-R must be answered and all beneficiaries must be listed on Schedule E of the form.

Missing Supporting Documents.

1. The decedent's last will and testament, along with any codicils, must be attached to the return even though they may not have been probated.
2. A copy of the decedent's last full-year Federal income tax return must be included or a statement attached to the return indicating that none was filed.
3. If real estate was held other than in the decedent's name alone (joint tenants with right of survivorship or tenants-in-common), a copy of the deed is required.
4. If an appraisal was made of real estate listed in the return filed, a copy should be submitted. It is generally not necessary to include the supporting documentation for the appraisal.
5. A supplemental affidavit should be submitted fully explaining:
 - a. The basis for a claim that the full value of any jointly held asset should not be subject to tax.

- b. Extraordinary expenses incurred by the estate which are claimed as deductions.

- c. Legal actions involving the decedent and/or the estate.

Missing or Invalid Signatures.

The tax return must be signed and notarized by the legal representative of the estate.

Incorrect Distributions and/or Tax Calculations.

1. Inheritance tax
 - a. The amount distributed on Lines 10–14 of the first page of the inheritance tax return must equal the amount listed on Line 9.
 - b. Each Class C beneficiary is entitled to an exemption of up to \$25,000. The lesser of \$25,000 or the amount received by a Class C beneficiary is exempt from tax. Only the excess over \$25,000 is subject to tax.

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Interest 9.50%

The interest rate assessed on amounts due for the period October 1, 2005 – December 31, 2005, will be 9.50%.

The assessed interest rate history is listed below.

Effective Date	Interest Rate
7/1/01	10.50%
10/1/01	9.00%
1/1/02	8.00%
1/1/03	7.25%
1/1/04	7.00%
1/1/05	8.00%
10/1/05	9.50%

common filing errors - from pg. 3

- c. If a Class D beneficiary receives property valued at less than \$500, the property received is exempt from tax. If a Class D beneficiary receives property valued at \$500 or more, there is no exemption and the full value of the property received is subject to tax.
2. Estate tax
 - a. The simplified method (column A) cannot be used if a Federal estate tax return has been filed or is required to be filed.
 - b. The New Jersey estate tax is based upon the provisions of the Internal Revenue Code in effect on December 31, 2001, and the credit for State Death Taxes allowable thereunder. The New Jersey exclusion amount is \$675,000.

Other Causes for Delay. The processing of an inheritance tax return or an estate tax return and the issuance of tax waivers may also be delayed by:

1. The filing of duplicate copies of returns.
2. The submission of copies of items previously filed such as estimated payment forms, applications for extensions of time to file, and Form L-4.
3. The submission of duplicate sets of supporting documentation when the inheritance tax return and the estate tax return are filed at the same time. Only one set of supporting documentation is required.
4. The use of binders or large staples.

5. Stapling items other than the check to the front of the return. ☐

Small Business Workshops

The Division of Taxation periodically conducts free workshops throughout New Jersey designed to help small businesses better understand their State tax obligations. The seminars are a half day in duration and cover the following topics:

- Business registration
- Meeting employer responsibilities
- Reporting business income
- Filing sales and use tax returns

For more information, including the current workshop schedule, visit the Division's Web site at:

www.state.nj.us/treasury/taxation/smallbus.htm ☐

LOCAL PROPERTY TAX Two-Year PAMS Project Under Way

Efforts to replace the State's outdated MOD IV property assessment system with a new Property Assessment Management System (PAMS) are well under way since the announcement of the implementation assignment to Tyler Technologies' CLT Division in May. Tyler/CLT is working closely with Division of Taxation staff to examine how the company's integrated assessment and tax collection product will be modified to suit the needs of New Jersey jurisdictions.

Approximately 120 people on two dozen committees were involved in developing the requirements for the

new system, and the Division is continuing to seek input from assessors, collectors, and county tax board representatives as the project team conducts a "gap/fit analysis." The analysis is conducted through a series of meetings that examine assessment and tax collection business processes in New Jersey. Throughout the meetings, participants discuss best practices and reach a consensus on how to incorporate a requirement within the framework of the new system.

Representatives from the assessment and tax community have been enlisted to provide feedback on a variety of topics such as: changes to the block/lot qualifier, revisions to the New Jersey manual and tables for residential properties, SR-1A processing, and a new farmland module. The Division appreciates the additional time and effort being volunteered by these assessment and tax collection professionals.

The Division has estimated that approximately 70% of Tyler/CLT's product, *iasWorld*, already fits the required functionality of PAMS and has been implemented in other jurisdictions across the United States. As a result, the State will see significant cost and time savings by modifying an existing product.

"We are putting our efforts into modifying the system for New Jersey," said Stephen Sylvester, Assistant Director of Property Administration. "This is an opportunity to take a fresh look at our assessment and tax business processes. We want to be sure the State's requirements make sense for today and the future, instead of being tied to 20-year-old paper-based procedures."

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PAMS project underway - from page 4

The gap/fit analysis is expected to be completed in October. Additional information about upcoming events and milestones for the project will be available on the PAMS Web site, through association meetings and publications, and from various communication pieces developed during the two-year project.

If you have questions or comments about PAMS, contact the PAMS Project Manager, Tom Bishop, at 609-984-8235. □

LOCAL PROPERTY TAX Realty Transfer Fee Collections

Realty transfer fees, which replaced the expiring Federal documentary tax in 1968, are collected when a deed is offered for recording.

A record amount of realty transfer fees was collected for fiscal year 2005. A total of \$653.3 million in realty transfer fees was collected by the counties. \$83.5 million was remitted to the county treasurers for the use of the counties, \$37.1 million was collected by the counties for deposit into the Public Health Priority Fund, and \$532.7 million was forwarded to the State for deposit into various State funds. This was a 64% increase over the amount collected for fiscal year 2004.

Much of the increase was due to the enactment of Chapter 66, P.L. 2004, effective August 1, 2004, which increased fees to their current level. The realty transfer fee totals were also increased by the imposition of a 1% fee on the buyers of certain residentially classed property for consideration in excess of \$1 million and a general purpose fee paid by

the seller in increments based on the entire consideration. □

LOCAL PROPERTY TAX Tax Assessors' Calendar

October 1 (on or before)–

- Agricultural land values for farmland assessed under Farmland Assessment Act published by State Farmland Evaluation Advisory Committee.
- Table of Equalized Valuations for State School Aid promulgated by Director, Division of Taxation.

October 1–

- All real property in taxing district valued for tax purposes (pretax year).
- \$250 veteran's property tax deduction eligibility established (pretax year).
- \$250 real property tax deduction for senior citizens, disabled persons, or surviving spouses eligibility established (pretax year).
- Added Assessment List and duplicate filed with County Tax Board.
- Omitted Assessment List and duplicate filed with County Tax Board.
- Limited Exemption and Abatement Audit Trail report filed with Property Administration and the County Tax Board.

November 1–

- Initial Statements, Forms I.S., and Further Statements, Forms F.S., for property tax exemption filed with tax assessor.
- Notices of Disallowance of farmland assessment issued by tax assessor.

November 15–

- Deadline for taxing districts' appeals of Table of Equalized Valuations to New Jersey Tax Court.

December 1 (on or before)–

- Appeals from added assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for added assessments, whichever is later.
- Appeals from omitted assessments filed with County Tax Board, or 30 days from the date collector of the taxing district completes bulk mailing of tax bills for the omitted assessments, whichever is later.

December 1–

- Assessors in Highlands municipalities certify to County Tax Board a report of assessed values of vacant land in 2003 base year and assessed value changes of such parcels in current year attributable to successful appeals, revaluations, or reassessments.

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Tax Relief for Hurricane Katrina/Rita Victims

For information on NJ tax relief for hurricane victims, go to:
www.state.nj.us/treasury/taxation/katrinarelieft.htm

assessors' calendar - from pg. 5

December 20–

- County Tax Board certifies to Director, Division of Taxation, the aggregate decline, if any, in the true value of vacant land, comparing current year to 2003 base year.

December 31 (on or before)–

- Legal advertisement of availability of Tax List for public inspection.
- Applications for veterans' deductions and property tax deductions for 2006 must be filed with assessor, during the pretax year, thereafter with collector during the tax year. □

Criminal Enforcement

Criminal Enforcement over the past several months included:

- On April 6, 2005, in Union City Municipal Court, Amparo I. Cagigas, 64, of Union City, was charged with the fourth-degree crime of sale of untaxed cigarettes to an undercover Union City detective at Botanica El Negro in Union City on December 20, 2004. Follow-up investigation by the Office of Criminal Investigation (OCI) and Union City Police resulted in the seizure of an additional quantity of untaxed

cigarettes at the bodega. Alexis Lopez-Garcia, 46, of Union City, who identified himself at different times as either an employee or the owner of the store, was charged with possession of the cigarettes. Cagigas faces up to 18 months' imprisonment and a fine of up to \$7,500 if convicted.

- On April 11, 2005, in Camden Municipal Court, Darrel A. Vail, 40, of Oaklyn, was charged with the fourth-degree crime of sale of untaxed cigarettes after he was observed by a Camden Police lieutenant selling untaxed cigarettes in the 100 block of Broadway. Follow-up investigation by OCI resulted in the seizure of 13 cartons of untaxed Newport cigarettes, worth \$800, which Vail had purchased over the Internet and was attempting to resell for \$4 per pack. Vail faces up to 18 months' imprisonment and a fine of up to \$7,500 if convicted.
- On April 11, 2005, in Camden Municipal Court, Christ Townsend, 45, of Pine Hill, was charged with the fourth-degree crime of sale of untaxed cigarettes from his car in the 2800 block of Mt. Ephraim Avenue. Townsend had been arrested by Camden Police responding to a call from a citizen. Follow-up investigation by OCI resulted in the seizure of 15 cartons of Kool, Newport, and Salem cigarettes worth \$933, which Townsend had purchased in Delaware and was attempting to resell for \$4 per pack. Townsend faces up to 18 months' imprisonment and a fine of up to \$7,500 if convicted.

Streamlined Sales and Use Tax Legislative Changes

P.L. 2005, c.126, effective October 1, 2005, conforms the New Jersey Sales and Use Tax Act to the Streamlined Sales and Use Tax Agreement. The legislation will affect the administration of New Jersey's sales and use tax in a number of areas. More information is available at:

[Notice: Rental of Equipment With An Operator](#)
[Summary of Changes in Tax Base for Motor Vehicle Lease Transactions](#)
[Notice: Sales And Use Tax Exemption for Clothing](#)
[Notice: New Jersey Enacts Streamlined Sales and Use Tax Agreement Legislation](#)
[Notice: Changes in the Sales and Use Tax Act Affecting the Sales of Food and Food Products](#)
[Notice on Leases and Rentals of Tangible Personal Property](#)
[Notice to the Direct Mail Industry](#)
[Notice to Retailers of Fur Clothing](#)
[SSTA DRAFT Proposed New Rules: N.J.A.C. 18:XX](#)
[Certificate of Mailing and Service](#)
[Streamlined Sales and Use Tax Agreement Response Letter](#)
[Streamlined Sales Tax Petition](#)
[Streamlined Sales and Use Tax Registration, Amnesty, and Program Information](#)

If you have questions concerning the streamlined sales and use tax legislation, [e-mail](mailto:streamlined@tax.state.nj.us) us at: streamlined@tax.state.nj.us

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criminal enforcement - from page 6

- On April 15, 2005, Ramoni Mustapha, 50, of 221 Custer Avenue, Newark, Essex County, was arrested and charged via a criminal complaint with theft by deception and filing and/or preparing false or fraudulent tax returns. Mustapha, a self-employed tax preparer and the owner/operator of Ramsalam Business and Tax Consultancy located at 103-105 South Day Street, Orange, Essex County, was arrested at his Orange business location by State investigators from the Division of Criminal Justice – Financial Crimes Bureau and tax agents from the Division of Taxation’s Office of Criminal Investigation. A joint-agency tax fraud investigation targeting the theft of thousands of dollars from the State Treasury resulted in the arrest of Mr. Mustapha on charges of filing hundreds of false or fraudulent New Jersey State income tax returns which resulted in refunds being issued in the names of fictitious “tax-payers.” The ongoing investigation has uncovered the filing of nearly 300 fraudulent New Jersey tax returns seeking over \$195,000 in illegal refunds. In conjunction with Mustapha’s arrest, the State law enforcement agents conducted a search of Mustapha’s office pursuant to a court-authorized search warrant. As a result of the search warrant, State investigators confiscated and seized tax returns, various tax documents and records, computer systems, false/fraudulent credit cards and identification documents, and related evidence. Mustapha has been released

from the Mercer County Jail after posting \$100,000 bail. The second-degree charge carries a maximum penalty of up to ten years in State prison and a fine of up to \$150,000 upon conviction.

- On April 20, 2005, the Superior Court – Monmouth County confirmed that Asif Hafeez, 50, formerly of Millstone Township, New Jersey, pled guilty to charges of possession of counterfeit New Jersey cigarette tax stamps, possession of 2,000 or more cigarettes bearing counterfeit tax stamps, and conspiracy. Hafeez had been arrested by OCI in Matawan, New Jersey, in the act of selling 319 cartons of counterfeit-stamped cigarettes to a retailer on June 27, 2001. A subsequent search of Hafeez’s home in Millstone resulted in the seizure of 29,793 counterfeit New Jersey, New York, and Oregon cigarette tax stamps. Hafeez later jumped bail and fled to Canada. While in Canada he was convicted in Canadian court of illegally exporting pseudoephedrine (which can be used in the manufacture of methamphetamine) into the United States and sentenced to probation, but was held by Canadian immigration officials. He was subsequently extradited to New Jersey. Hafeez was scheduled to be sentenced on April 29, 2005, and also faces in Pennsylvania a charge of violation of probation which had been imposed for an earlier violation of Pennsylvania’s cigarette tax. This investigation was conducted by OCI with assistance from the Matawan Police Department and was prosecuted by the Monmouth County Prosecutor’s Office, whose efforts included pursuit of international extradition

of the subject and his transportation back to New Jersey.

- On May 9, 2005, in Paterson, New Jersey, the Passaic County Grand Jury released an indictment of Francisco P. Delgado, 59, of Clifton, New Jersey. The indictment charges that Delgado, as the responsible person of Estrella Rental Car Incorporated, in Paterson, New Jersey, did, with the intent to evade tax, fail to file a 2003 corporation business tax return; fail to pay 2003 corporation business tax; fail to file sales and use tax returns for the second, third, and fourth quarters of 2003 and the first quarter of 2004; fail to pay over to the State the sales and use tax for the corresponding quarters; fail to file domestic security fee returns for the second, third, and fourth quarters of 2003 and the first quarter of 2004; and fail to pay over to the State the domestic security fee for the corresponding quarters. Delgado was also charged with making false statements in documents submitted to the Division of Motor Vehicles and with presenting false documents for filing with the Division of Motor Vehicles. This was a joint investigation by OCI and the Bergen County Sheriff’s Office which commenced after Delgado was arrested by the Sheriff’s Office for selling “international driver’s licenses” to illegal aliens. The “international driver’s license” is similar in appearance to a legitimate driver’s license, but is not issued by or honored by any government agency. This case marks the first indictment for

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criminal enforcement - from pg. 7

criminal tax violations involving the domestic security fee, which was instituted after the September 11, 2001, terrorist attacks to fund New Jersey counter-terrorism operations. The fee is collected by vehicle rental businesses at the rate of \$2 per day per vehicle rented. This case was presented to the grand jury by the Bergen County Prosecutor's Office.

- On May 12, 2005, OCI began an analysis of the records of cigexpress.com in Richmond, Virginia, relating to Internet sales of cigarettes to New Jersey residents in 2001–2004. Preliminary analysis indicates that this vendor made approximately 315 separate sales to New Jersey residents during this period and failed to report these sales to the Division of Taxation, a violation of the Federal Jenkins Act. This information will be forwarded to Audit Activity for billing of consumers for the appropriate cigarette tax and sales and use tax.
- On May 12 and 13, 2005, as part of a program of enhanced cigarette tax enforcement, OCI conducted inspections of 20 cigarette retailers identified by the Field Audit Branch as candidates for comprehensive audits involving sales and use tax, cigarette tax, corporation business tax, and gross income tax. Three of the retailers were cited by OCI for cigarette tax and sales tax violations, 13.3 cartons of untaxed cigarettes were seized, and data regarding retailer identification, volume of cigarette sales, and retail price markup was forwarded to Field Audit.

- Between March 4 and May 20, 2005, at Secaucus, New Jersey, OCI seized 1,750 cartons of untaxed cigarettes which had been flown into Newark Airport from various European countries by Internet vendors for delivery to customers. This brings the total number of cartons of cigarettes seized in this ongoing investigation, which began on November 24, 2004, to approximately 45,582. The approximate values of these seizures are as follows:

Retail value \$2,836,112.04

Tax loss averted:

Cigarette \$1,093,968.00

Sales & Use 160,448.64

Total \$1,254,416.64

These seizures were accomplished with the cooperation of the U.S. Bureau of Customs and Border Protection, as a result of information developed by the U.S. Postal Inspection Service. Since the beginning of this operation, the number of cartons being shipped into New Jersey by air per month has declined from 16,297 in November 2004 to 351 in May 2005. In addition, as a result of our investigation U.S. Customs has instituted a policy of holding and turning over to the Division all untaxed cigarettes shipped into New Jersey. That

agency previously had not interdicted cigarettes being shipped by air freight.

- On June 3, 2005, in Superior Court – Monmouth County, Freehold, New Jersey, Michael J. Buonopane, 44, of Rumson, New Jersey, pled guilty to charges of collecting and failing to remit \$4.9 million of taxes including \$2,014,386 in sales and use tax, \$106,013.51 in State gross income tax withheld from employees' wages, \$653,965.41 in State unemployment and disability contributions, and \$2,074,362.16 in Federal taxes, and of failing to file corporation business tax returns in connection with the operation of Mr. Good Lube, Inc., and seven other corporations which provided retail automobile maintenance and car wash services at 17 locations in Monmouth, Ocean, Middlesex, Union, Essex, and Morris counties between 1999 and 2004. This case was a joint investigation by OCI, the New Jersey Division of Criminal Justice, and the New Jersey Department of Labor and Workforce Development, who initiated the inquiry, and was prosecuted by the New Jersey Office of the Attorney General.

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Current Amnesty Programs

The city of Chicago is conducting a tax amnesty program. During the designated amnesty period, taxpayers have a chance to pay back taxes with reduced (or eliminated) penalty and/or interest. For more information, including eligibility requirements, or to obtain an application, visit the Web site listed below.

Chicago Oct 24 – Dec 16

www.cityofchicago.org

criminal enforcement - from page 8

- On June 10, 2005, in Superior Court – Monmouth County, Mitesh J. Shah, 34, of Middletown, New Jersey, was sentenced to three years' probation and ordered to pay restitution in the amount of \$25,000 to the Division of Taxation and a fine of \$5,000. Shah had been arrested by OCI on June 27, 2001, after an investigation determined that he was engaged in the sale of untaxed cigarettes, bearing counterfeit New Jersey tax revenue stamps, at the Krauszer's convenience store he operated in Matawan, New Jersey. This case was prosecuted by the Monmouth County Prosecutor's Office.
- On June 13, 2005, in Dover Township, New Jersey, Brian C. Swedberg was arrested by investigators from the Ocean County Prosecutor's Office based on an arrest warrant charging him with misapplication of entrusted funds (second degree). Mr. Swedberg operated The Christian Counseling Center and Guardian Elder-care Management, both located on Route 37 in Dover Township. In addition, auditors from the Office of Criminal Investigation assisted in the execution of a search

warrant at the business locations which resulted in the seizure of computers, business records, and financial records. Mr. Swedberg is suspected of abusing his position as a court-appointed legal guardian of the elderly. This joint investigation with the Ocean County Prosecutor's Office is continuing.

- On June 17, 2005, in Dover Township Municipal Court, Richard Carroll, 48, of Brick Township, New Jersey, was charged with sale of untaxed cigarettes and eight disorderly person offenses for violations of the Cigarette Tax Act and the Tobacco Products Wholesale Sales and Use Tax Act, as a result of a joint investigation at Towne Stationery, Toms River, by OCI and the Dover Township Police which resulted in the seizure of 8 cartons of untaxed cigarettes and 173 cigars for which there was no record of payment of tobacco products tax. The investigation was opened after Dover Township Police received numerous complaints that Carroll was selling cigarettes to students of nearby Toms River South High School. This case coincides with an initiative ordered by State

Treasurer John E. McCormac. Taxation's enforcement agents have begun inspections of retail establishments frequented by minors to ensure that no untaxed cigarette or cigar products are being sold and that no sales of single cigarettes, referred to as "loosies," are being made. Any untaxed tobacco products or loose cigarettes will be seized and the appropriate charges filed.

- On June 20, 2005, in Freehold, New Jersey, a Monmouth County Grand Jury handed up a 27-count indictment charging Joseph W. Hughes, the former pastor of The Church of the Holy Cross in Rumson, New Jersey, with the theft of \$2,032,422 from The Church of the Holy Cross. Hughes stands accused of eight second-degree counts and one third-degree count of theft by deception and 18 tax-related charges for filing false New Jersey State gross income tax returns and failure to pay New Jersey gross income tax in the amount of \$120,229.50. Joseph W. Hughes wrote and endorsed checks to cash and wrote checks to cover personal expenses

continued on page 10

Enforcement Summary Statistics Second Quarter 2005

Following is a summary of enforcement actions for the quarter ending June 30, 2005.

• Certificates of Debt:		• Jeopardy Seizures	3
Total Number	3,506	• Seizures	60
Total Amount	\$36,601,442	• Auctions	5
• Jeopardy Assessments	380	• Referrals to the Attorney General's Office	393

For more detailed enforcement information, visit our Web site at:

www.state.nj.us/treasury/taxation/jdgdisc1.htm

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against church bank accounts between 1997 and 2004. He used these funds to support a lavish lifestyle; neither the church nor its parishioners received benefit from these expenditures. This case was a joint investigation by the Office of Criminal Investigation and the Monmouth County Prosecutor's Office. The Diocese of Trenton referred this case to the Prosecutor's Office and fully cooperated in the investigation.

- On June 20, 2005, in Superior Court – Salem County, Jaswinder S. Dhillon, currently a resident of Henderson, Nevada, pled guilty to a charge of failing to file motor fuels tax returns. Singh had been indicted on February 2, 2005, by a Salem County Grand Jury on three criminal charges as a result of an investigation which established that Dhillon, the principal of MJS Truck Plaza Inc. in Carneys Point, New Jersey, failed to file tax returns and remit motor fuels tax and sales tax he collected from customers, as a trustee for the State, in an amount greater than \$75,000, a second-degree offense. Dhillon closed his truck stop on July 31, 2000, and failed to turn over the entrusted tax dollars he had collected for June and July 2000, the last two months of business. The matter was investigated by OCI and prosecuted by the Salem County Prosecutor's Office.
- Two hundred eight (208) complaints alleging tax evasion were evaluated from April through June 2005 in the Office of Criminal Investigation.

- During the same period, one hundred forty-four (144) charges were filed in court and thirty-two (32) arrests were made in thirty-four (34) cases involving violations of the Cigarette Tax Act. 968.2 cartons of untaxed cigarettes, having a total value of \$60,241.19 and including 351.2 cartons bearing counterfeit New Jersey tax revenue stamps, were seized. □

Tax Briefs

9-1-1 System and Emergency Response Fee

9-1-1 System and Emergency Response Assessment — Legislation enacted last year imposes a "9-1-1 System and Emergency Response Assessment" fee of \$.90 to be charged on each mobile and land-line telephone number on and after July 1, 2004. If the customer is capable of accessing 9-1-1 through the public-switched network, the line or number will be subject to the fee. The fee is imposed on customers with a primary place of use in this State.

According to the legislation, revenue collected from the fee will serve to replace the current 9-1-1 infrastructure statewide with a state-of-the-art enhanced 9-1-1 system.

With regard to telecommunications services, the Division only administers sales tax and the 9-1-1 fee. If a customer has questions regarding any other tax or fee on a telecommunications bill, the customer should contact his or her carrier for more information. In addition, the FCC maintains an informative Web site at www.fcc.gov explaining various charges found on a telephone bill.

For more information on the 9-1-1 fee, please see "Notice to Telecommunications Providers" available on the Division's Web site at:

www.state.nj.us/treasury/taxation/pdf/911fee.pdf

Corporation Business Tax

AMA Consent After December 31, 2006 — As indicated in N.J.S.A. 54:10A-5a.e., after December 31, 2006, a corporation whose net income is exempt from taxation pursuant to U.S.C. §381 et seq. (Pub. L. 86-272) will be relieved of Alternative Minimum Assessment (AMA) responsibilities if it consents to jurisdiction to pay corporation business tax (CBT).

Between June 30, 2006, and December 31, 2006, a corporation whose income is exempt from CBT based upon Pub. L. 86-272 must continue to calculate the AMA. Consent to jurisdiction is required after December 31, 2006.

Under N.J.A.C. 18:7-18.5(b), an AMA credit may be carried forward to subsequent privilege periods, including periods when the AMA is no longer applicable, during which the tax pursuant to N.J.S.A. 54:10A-5 exceeds the AMA provided that:

1. The credit applied shall not reduce the amount of tax otherwise due to an amount less than the AMA for that period;
2. The credit applied shall not reduce the amount of tax otherwise due by more than 50%; and
3. The credit applied shall not reduce the amount of tax otherwise due below the statutory minimum set forth in N.J.S.A. 54:10A-5(e).

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Specific procedures have not yet been implemented for filing the "consent" referenced above. As 2006 approaches, the Division will notify taxpayers of the proper procedure for filing consent with regard to the AMA calculation.

Converting an LLC to an S Corporation — Some states and statutes have particular legislative authority to convert a particular entity that has been formed pursuant to one title to another title. For example, conversion from a for-profit to a not-for-profit corporation may be made pursuant to N.J.S.A. 15A:1-4b. In New Jersey there is no analogous provision that authorizes "conversion" in the context of an LLC.

Thus, a business owner must choose whether its business is to be operated as an LLC under the terms of LLC law, N.J.S.A. 42:2B-1 et seq., or as a corporation operated under the terms of corporate law, N.J.S.A. 14A:1-1, et seq. In the case of corporations, the owners have transferable shares to signify ownership. In the case of LLCs, the owners are members governed by an operating agreement rather than a certificate of incorporation and bylaws.

For tax purposes, the Federal Form 8832 entity classification filing governs taxability but does not affect entity governance. If the business owners decide to be governed by corporate law and to be taxed as an S corporation, then they could terminate the LLC registration (Form L-109), incorporate as a C corporation by filing a certificate of incorporation, and then file the Federal Election by a Small Business Corporation (Form 2553) and a New Jersey S Corporation or New Jersey

QSSS Election (Form CBT-2553) to be taxed as an S corporation for New Jersey purposes. Under some circumstances there may be tax consequences to terminating and commencing a new entity.

Alternatively, the members of the LLC may file a Federal Form 8832 Entity Classification Election and a Federal Form 2553 so that the LLC is taxed as an S corporation Federally. For New Jersey tax purposes this change in classification would meet the definition of "corporation" under the corporation business tax pursuant to N.J.S.A. 54:10A-4(c) which, for tax purposes, defines a corporation as an "entity classified as a corporation for federal income tax purposes." Accordingly, the S corporation registration section for the New Jersey Division of Revenue will accept the filing of a Form CBT-2553 to allow an LLC to be taxed as a New Jersey S corporation (assuming that the Federal Forms 8832 and 2553 have been properly filed.) Under this scenario neither the Request for Change of Registration Information (Form REG-C-L) nor the Business Entity Amendment Filing (Form REG-C-EA) would be required by the S corporation registration staff.

Dissolution Without Assets — Pursuant to N.J.S.A. 14A:12-16, a Certification of Dissolution Without Assets (Form C-159C) may be used to dissolve a corporation only if the corporation meets the criteria as provided in N.J.S.A. 14A:12-4.1. If cash is still in the bank, then the corporation has assets which can be distributed to shareholders and the corporation is precluded from filing Form C-159C. However, if the cash has been distributed 24 months prior, the corporation may file Form C-159C.

N.J.S.A. 14A:12-16 also provides that distributions to shareholders may be made in cash and/or in kind.

Gross Income Tax

Taxation of Employee Stock Options Earned in New Jersey and Exercised by a Nonresident — For New Jersey income tax purposes, stock options are taxable as wages/compensation and are included in gross income under N.J.S.A. 54A:5-1(a). Nonqualified stock options are taxable as compensation in the same manner as prescribed for Federal purposes. Taxpayers, however, will not realize a taxable gain until the options are exercised. The gain is then measured by the difference between the fair market value of the options at the time of exercise and the taxpayer's exercise price.

Nonresidents are subject to tax on income earned from sources within New Jersey. Included in the definition of New Jersey source income is income earned in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State. Regardless of the taxpayer's current residence, the stock options the taxpayer received while working in New Jersey, or for a New Jersey company, will be taxable as New Jersey source income when exercised.

Nursing Home Assessment

Pass-Through to Residents — The Division of Taxation received an inquiry regarding the Nursing Home Assessment: specifically, whether the obligation is the nursing home's alone or if it can be passed on to the nursing home residents.

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The New Jersey "Nursing Home Quality of Care Improvement Fund Act" was signed into law on July 1, 2003, as P.L. 2003, c.105, and was subsequently amended on June 29, 2004, by P.L. 2004, c.41. The Act establishes a quarterly assessment on nursing homes in order to provide additional funds for improving the quality of care by increasing Medicaid reimbursement for services delivered to those senior citizens and other persons residing in New Jersey nursing homes. The law was made effective on July 1, 2004.

Although the assessment is on the nursing care provider, the provider may pass on the assessment to residents or third-party payers to the extent that the provider would recoup its net loss taking into account any Medicare reimbursement funds received. The Division of Taxation does not have the authority to regulate whether or not a facility chooses to pass on the assessment or in what manner the facility chooses to do so.

Sales and Use Tax

Direct Pay Permits — Under the New Jersey Sales and Use Tax Act, the Director of the Division of Taxation may use his discretion to authorize a purchaser who acquires tangible personal property or services under circumstances which make it impossible at the time of acquisition to determine the manner in which the tangible personal property or services will be used, to pay the tax directly to the Director and waive the collection of the tax by the vendor. N.J.S.A. 54:32B-12(b). The holder of a valid Direct Payment Permit (Form ST-6) may issue a Direct Payment Certificate (Form ST-6A) at the time of purchase if the taxable status of the purchase is

unknown at the time of purchase. To obtain a Direct Payment Permit Application contact Audit Services at 609-984-5775. The Division publishes a list of the current ST-6 holders, which is available at: www.state.nj.us/treasury/taxation/taxinfo.htm

Under certain circumstances, taxpayers may be able to enter into Sales and Use Tax Compliance Agreements, also known as Effective Use Tax Rate Agreements ("EUTRA"), which allow the use of an "effective tax rate" to calculate sales and use taxes owed. A taxpayer must apply and meet certain qualifications in order to participate in the program. Specific information regarding the agreement program is available in the notice located on the Division's Web site at:

www.state.nj.us/treasury/taxation/sucta.htm

Virtual Tour Services — The Division responded to an inquiry about the application of the New Jersey

Sales and Use Tax Act to a photographer who sells brochures and also provides virtual tours of real estate online.

If a photograph is either scanned, taken with a digital camera, or computer-generated and then transmitted solely by e-mail or other form of electronic transmission, the transaction is treated as the sale of intangible property, which is not subject to tax. As such, photography services rendered in producing photographs used solely in virtual tours are not subject to tax as long as the photographs are only accessible electronically and the customer does not receive anything in tangible (hard-copy) form, such as prints, negatives, or discs.

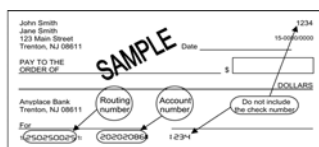
Sales of portraits, photographs, motion pictures, slides, frames, photograph albums, picture post cards, and brochures are subject to sales tax as sales of tangible personal property. N.J.S.A. 54:32B-3(a).

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Pay NJ Taxes Electronically

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* Fee of 2.5% of tax payment applies.

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For more information on the taxability of photography services, see ANJ-2, *Professional Photographers and New Jersey Sales Tax*, which is available on the Division's Web site at: www.state.nj.us/treasury/taxation/pdf/pubs/sales/anj2.pdf □

In Our Courts

Administration

Power of Attorney – Corallos, Inc. v. Director, Division of Taxation, decided June 13, 2005; Tax Court Nos. 006766-2003 and 006985-2003.

Vincenzo Carollo was the sole shareholder and president of the plaintiff (Corallos). Mr. Carollo is a 56-year-old with a fifth-grade education who can speak and understand English; however, he can read and write only a little English. Mr. Carollo has run a business for ten years and has obtained bank loans for the business. With help, Mr. Carollo testified that he could understand the terms of the loan documents that he was required to sign.

In an initial contact letter, the Division notified Corallos that an audit was to be conducted. The letter also included the Division's standard power of attorney (POA) form advising that if Corallos desired to be represented by someone else, that it should complete and return the document. The POA testified that he filled in the blanks on the POA form except for Mr. Carollo's signature, his title, the date signed, and the years covered under the POA. The POA form contained language indicating that the POA had authority to "executive consents extending the statutory period for assessments." Mr. Carollo acknowledged that it was his signature on the POA form

naming his accountant as the POA. The POA form was faxed to the Division by the POA who testified that he did not explain the legal effect of the POA form to Mr. Carollo.

After the audit commenced, the POA signed a form that consented and agreed to extend the statute of limitations (SOL) for assessment to a date certain in the future at which time certain periods under audit would have been beyond the SOL period for assessment. Later, Corallos's POA signed a similar form extending the SOL for assessment further into the future. The POA testified that he was certain that he did not explain the consent form to Mr. Carollo.

During the audit, the auditor went to the POA's office to examine Corallos's books and records and obtained information from the POA concerning the business. The auditor visited the business where the POA introduced the auditor to Mr. Carollo. At the site visit, the auditor questioned the POA regarding business activities while in the presence of Mr. Carollo, who gave the auditor no reason to doubt the POA's authority to act. At one point, the POA did not respond to several of the auditor's telephone inquiries and the POA's receptionist indicated that the POA may not be representing Corallos. Thereafter, the auditor phoned Mr. Carollo who confirmed to the auditor that the POA represented Corallos. The audit later concluded with the issuance of the Division's notice of assessment related to final audit determination from which Corallos appealed.

Corallos claims that the consent forms signed by its POA to waive or extend the SOL for assessment past the date that the statute would

expire were invalid because Corallos did not delegate that authority to its POA and therefore any reliance the Division placed on the POA form was unreasonable. Corallos also contends that there are deficiencies in the POA document: plaintiff's name is misspelled; the dates for which the POA is appointed are not specified; there is no title or date in the blanks next to Mr. Carollo's name; and the POA form states that it authorizes the POA to "executive" rather than "execute" consents extending the SOL. Furthermore, Corallos relies on the auditor's unsuccessful attempts to contact the POA as evidence that the POA could not have been reasonably relied upon.

The Court concluded that the consent forms to extend the SOL executed by Corallos's POA were valid waivers of the SOL because Mr. Carollo signed the POA form that expressly authorized the POA to consent to any extension of time to make assessments. The Court also determined that the Division reasonably relied on the POA document despite the defects in the document claimed by Corallos. Furthermore, the Court concluded that even if the Division should have required that the POA document be dated and the dates of the years at audit filled in, that the POA had apparent authority to waive the SOL because Mr. Carollo's actions would make one believe that the POA had authority to act.

Corporation Business Tax Nexus and Physical Presence – Lanco, Inc. v. Director, Division of Taxation, decided August 24, 2005; Appellate Division No. A-3285-03T1.

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At issue is whether New Jersey may constitutionally subject a foreign corporation to the corporation business tax (CBT) where the foreign corporation, pursuant to a license agreement, derives royalty income from a corporation that operates a retail business in New Jersey and has no physical presence (real or personal property or personnel) in New Jersey.

The Tax Court previously held that subjecting plaintiff (Lanco) to the CBT would violate the Commerce Clause of the United States Constitution because Lanco did not have a physical presence in New Jersey. The Appellate Division disagreed and reversed the judgment of the Tax Court.¹

The Appellate Division opined that the physical presence requirement that was needed to satisfy the Commerce Clause in the context of the sales and use tax arena in the United States Supreme Court decision in *Quill*², as established by *National Bellas Hess*³, was not applicable to taxes other than sales and use taxes. The Appellate Division quoted from *Quill* where it stated that “[w]e have not, in our review of other types of taxes, articulated the same physical-presence requirement that *Bellas Hess* established for sales and use taxes.” Turning to the issue of taxability in the income tax area, the

Appellate Division held that the CBT may be constitutionally applied to impose tax on Lanco’s income derived from licensing fees attributable to New Jersey. In reaching its decision, the Appellate Division found persuasive the reasoning in *Geoffrey*⁴, *A&F Trademark*⁵, and *The Gap*⁶, as well as *Roadway Express*⁷, which stated that “the CBT statute is clearly intended to reach foreign corporations engaged in business activities to the full extent that is constitutionally permissible.”

Lanco has filed a Notice of Petition for Certification and a Notice of Appeal with the New Jersey Supreme Court.

¹ *Lanco, Inc. v. Director, Division of Taxation*, 21 N.J. Tax 200 (Tax 2003).

² *Quill Corp. v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904, 119 L. Ed. 2d 91 (1992).

³ *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, 386 U.S. 753, 87 S. Ct. 1389, 18 L. Ed. 2d 505 (1967).

⁴ *Geoffrey Inc. v. South Carolina Tax Comm’n*, 437 S.E.2d 13, 18, cert. denied, 510 U.S. 992, 114 S. Ct. 550, 126 L. Ed. 2d 451 (1993).

⁵ *A & F Trademark, Inc. v. Tolson*, 605 S.E.2d 187 (N.C. Ct. App. 2004), petition for cert. filed, 73 U.S.L.W. 3719 (U.S. June 6, 2005) (No. 04-1625).

⁶ *Secy, Dep’t of Revenue v. Gap (Apparel), Inc.*, 886 So.2d 459, 461-62 (La. Ct. App. 2004).

⁷ *Roadway Express, Inc. v. Director, Division of Taxation*, 50 N.J. 471, 483 (1967), appeal dismissed, 390 U.S. 745, 88 S. Ct. 1443, 20 L. Ed. 2d 276 (1968).

Sales and Use Tax

Garbage Removal – *Blue Diamond Disposal, Inc. v. Director, Division of Taxation*, decided June 30, 2005; Tax Court No. 005008-2004.

Plaintiff Blue Diamond Disposal, Inc., (BDD) is a solid waste hauler. At issue is whether BDD’s One Shot Deal, as coined by BDD, is subject to tax under the Sales and Use Tax Act. A One Shot Deal is where BDD places an empty dumpster or similar container at a customer’s location for the customer to fill with unwanted personal property. When the customer is finished with the container, BDD returns and hauls it to a disposal site.

BDD claimed that the One Shot Deal is the transportation of property, which is exempt from taxation under N.J.S.A. 54:32B-8.11. On the other hand, the Division argued that the One Shot Deal is subject to taxation under N.J.S.A. 54:32B-3 where sales tax is imposed upon maintaining and servicing real property excluding garbage removal performed on a regular contractual basis for a term not less than 30 days.

The Court found that transportation was only incidental to the primary service of garbage removal. The One Shot Deal was a trash removal service and the Court opined that it made no difference who owned the container or what container the garbage was in. The Court determined that BDD’s service was similar to an example of trash removal in N.J.A.C. 18:24-13.2 where a private

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company picks up garbage at a house. Therefore, the Court upheld the Division's assessment concluding that receipts from the One Shot Deal are subject to sales tax under N.J.S.A. 54:32B-3.

Adequate Books and Records — *Max Dufner, Inc. v. Director, Division of Taxation*, decided June 24, 2005; Tax Court No. 004367-2004.

Plaintiff Max Dufner, Inc., (MDI) sold sandwiches and other foods as well as beverages. An audit of MDI revealed that MDI did not maintain purchase journals, sales records, or exemption certificates to support its reported sales or nontaxable sales. Therefore, the Division estimated and assessed additional sales tax.

MDI claims that the majority of its sales were tax-exempt wholesale sales to lunch truck vendors and/or were exempt because the sales were food that was not ready to be eaten. The Court ruled that the burden is on MDI to prove that taxes were reported correctly noting that the mere appearance of qualification for exemption is not sufficient to even partially prevail. MDI did not retain cash register tapes and admitted that it did not keep books or journals indicating the amount of sales and which sales were exempt. MDI's method of determining sales was based upon the amount of bank deposits that were deposited into its bank account. The Court found that no records were kept showing which sales qualified for tax exemption and indicated that it had no way of knowing whether receipts from any day were entirely deposited.

Concluding that MDI presented no credible evidence to show that the audit was arbitrary, capricious or

unreasonable, the Court determined that it was reasonable for the Division to estimate MDI's tax liability and upheld the Division's assessment. □

In Our Legislature

Gross Income Tax

Earned Income Tax Credit — P.L. 2005, c.210, enacted August 29, 2005, and effective immediately, requires the State Treasurer to develop a statement regarding the earned income tax credit allowed under Federal and State income tax laws, and requires the Commissioners of the Departments of Labor and Workforce Development, Human Services, Community Affairs, and all employers to notify certain people about these credits by means of the written statement developed by the Treasurer.

Inheritance/Estate Tax

Corrections Governing Wills and Estates — P.L. 2005, c.160, enacted July 19, 2005, and applied retroactively to February 27, 2005, makes minor technical changes in the provisions governing wills and estates. □

Tax Calendar

The following three calendars provide listings of filing and payment dates for tax year 2004 (January 1, 2004 – December 31, 2004) and tax year 2005 (January 1, 2005 – December 31, 2005) for businesses and individuals:

• **Chronological List of Filing Deadlines —** This calendar is for use by both businesses and individuals. If you are responsible for a return that is not listed in this calendar, please refer to the

instructions that accompanied the return, or contact the Customer Service Center at 609-292-6400 for the appropriate filing deadline.

[2004](#) [2005](#)

• Alphabetical Summary of Due Dates by Tax Type

[2004](#) [2005](#)

• **Payment Dates for Weekly Payers —** An employer or other withholder of New Jersey gross income tax is designated a "weekly payer" if the amount of tax they withheld during the previous tax year was \$10,000 or more.

[2004](#) [2005](#) □



important phone numbers

Customer Service Ctr .. 609-292-6400
Automated Tax Info 1-800-323-4400
..... 609-826-4400

FAIR Rebate

Hotline 1-888-238-1233

Property Tax Reimbursement

Hotline 1-800-882-6597

Earned Income Tax Credit

Information 609-292-6400

NJ TaxFax 609-826-4500

Business Paperless Telefiling

System 1-877-829-2866

Speaker Programs 609-984-4101

Alcoholic Bev. Tax 609-984-4123

Corp. Liens, Mergers, Withdrawals

& Dissolutions 609-292-5323

Director's Office 609-292-5185

Inheritance Tax 609-292-5033

Local Property Tax 609-292-7221

Motor Fuels Tax

Refunds 609-292-7018

Public Utility Tax 609-633-2576